

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:

Children's Television Obligations
Of Digital Television Broadcasters

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) MM Docket No. 00-167
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COMMENTS OF NICKELODEON IN SUPPORT OF JOINT PROPOSAL

Nickelodeon is a party to the Joint Proposal¹ that is currently the subject of notice and comment in the *Second Further Notice of Proposed Rulemaking* in this docket.² Nickelodeon, the industry's leading producer of original programming for kids, provides quality safe-haven programming for children; our philosophy is to put children first and to help connect them to their world. Consistent with that philosophy, Nickelodeon urges the Commission to adopt the Joint Proposal as submitted. As the Chairman and his fellow Commissioner have observed,³ this Joint Proposal was the product of a good faith and diligent effort among the various entities involved in this proceeding to reach a result that ensures that the interests of children are

¹ *Joint Proposal of Industry and Advocates on Reconsideration of Children's Television Rules*, MM Docket No. 00-167 (filed Feb. 9, 2006).

² *Second Further Notice of Proposed Rulemaking*, FCC 06-33, MM Docket No. 00-167 (rel. March 24, 2006).

³ See *id.*, *Statement of Chairman Kevin J. Martin* ("I am pleased that the children's advocates and the industry have come together to develop recommendations which ensure that the interests of children are well protected."); *Statement of Commissioner Michael J. Copps* ("I commend those who met to formulate the proposals that are the subject of today's further notice."); *Statement of Commissioner Jonathan S. Adelstein* ("The joint proposal is the product of hard work, conscientious negotiations and a strong willingness of the two sides to compromise.").

protected while avoiding the legal and other problems inherent in the rules as originally promulgated.⁴

Among other things, adoption of the Joint Proposal would help to expedite the implementation and enforcement of children's television rules, eliminate the need to await the conclusion of numerous pending appeals (now being held in abeyance in the United States Court of Appeals for the Sixth Circuit) challenging the legality of the rules originally adopted, and reduce the uncertainty surrounding the validity of applicable children's television rules. Adoption of the Joint Proposal would also help to clarify the scope and function of the children's television rules for broadcasters, cable providers, internet services and content providers, and the viewing public. These benefits clearly serve the public interest and warrant the Commission's prompt action to revise the rules as suggested in the Joint Proposal.

To the extent the Commission deviates from the Joint Proposal and retains any element of the original rules, however, Nickelodeon respectfully reasserts that those rules suffer from numerous legal flaws. As discussed in greater detail in Nickelodeon's *Petition for Reconsideration*,⁵ those flaws include, among other things: (1) the Commission lacked statutory authority to change the definition of "commercial matter" in the manner it did; (2) the new definition of "commercial matter" is inconsistent with the Children Television's Act and is *ultra vires* because Congress excluded cable from the E/I programming requirement; (3) the rules violate the First Amendment; (4) the changes in Commission policy are not adequately justified; (5) the Commission failed to provide adequate notice of, and opportunity to comment on, the rules; (6) the rules will adversely impact children's cable networks and will not achieve the

⁴ See *In the matter of Children's Television Obligations Of Digital Television Broadcasters*, Report and Order and Further Notice of Proposed Rule Making, 19 FCC Rcd 22,943 (2004).

⁵ *Petition for Reconsideration of Nickelodeon*, MM Docket No. 00-167 (filed Feb. 2, 2005).

Commission's stated purposes; and (7) the Commission adopted the website restrictions prematurely and without considering the unnecessary burden such rules would have on children, parents, and programmers. Nickelodeon incorporates herein all of the arguments made in the *Petition for Reconsideration*.

For all of these reasons, Nickelodeon urges the Commission expeditiously to revise the children's television rules as provided in the Joint Proposal.

Respectfully submitted,

NICKELODEON

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